IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13074 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAJESHKUMAR ALIAS RAJA RADHASHARAN SHARMA

Versus

COMMISSIONER OF POLICE AHMEDABAD

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Appearance:

1. Special Civil Application No. 13074 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 22/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 20th of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 21st of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration filing of solitary criminal case against the petitioner before the Prohibition Police Station, Southern Zone, under the Bombay Prohibition Act, on 17th of September, 2004. It was alleged that the petitioner was found in possession of 315 bottles of prohibited foreign liquor. The detaining authority thoroughly examined the investigation papers in the said crime registered against the petitioner and came to the conclusion that the petitioner was engaged in storing, selling and transporting prohibited foreign liquor. The detaining authority came to the conclusion that the activities of the petitioner were bootlegging activities within the meaning of the PASA Act. The detaining authority came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority also concluded that the bootlegging activities of the petitioner were required to be prevented forthwith. The detaining authority after taking into consideration other measures which may be taken against the petitioner under the general law, as a last resort, came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention against the petitioner, which is under challenge in this Special Civil Application.

3. Learned Advocate Ms. Banna S. Dutta for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied mind properly to the relevant material placed before him in arriving at the subjective satisfaction.

5. The grounds of detention as placed on record clearly indicate that the petitioner was in police custody on remand in the criminal case registered against him when the order of detention came to be served upon him. In this respect, the detaining authority reached to the conclusion that the remand period being over, the petitioner was likely to be produced before the competent court and on so producing, the petitioner was likely to move application for bail. The detaining authority also reached to the subjective satisfaction that on so moving the application for bail, the petitioner was likely to be released on bail and was likely to continue his illegal activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT,as reported in AIR 2000 SC 3675. The Apex Court pleased to observe that there must be cogent materials before the Officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and detention order based on such material was held liable to be quashed.

7. In the present case, while going through the grounds of detention, it becomes clear that there was no material at all placed before the detaining authority to infer that the petitioner was likely to file an application for bail on his producing before the competent court on remand period being over. There was no material at all placed before the detaining authority to infer that on so moving bail application by the petitioner, he was likely to be released on bail. Thus, the inference drawn and the subjective satisfaction reached at by the detaining authority in this respect is based on no material at all, let alone, any cogent material. The subjective satisfaction, therefore, arrived at by the detaining authority that the petitioner was likely to be released on bail, and was likely to continue his illegal activities, is vitiated on account of no material at all. The subjective satisfaction therefore arrived at by the detaining authority is not valid, legal and in accordance with law. The order under challenge is required to be quashed on this ground alone.

8. In the result, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City, on 20.9.2004, against the petitioner in exercise of

powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Rajeshkumar alias Raja Radhasharan Sharma is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

p.n.nair